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Rush University Medical Center and Healthcare, Professional, Technical, Office, Warehouse and Mail Order Employees Union, Local 743, International Brotherhood of Teamsters. Case 13–CA–152806

August 7, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON
AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by Healthcare, Professional, Technical, Office, Warehouse and Mail Order Employees Union, Local 743, International Brotherhood of Teamsters (the Union) on May 22, 2015, the General Counsel issued the complaint on June 4, 2015, alleging that Rush University Medical Center (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 13–RC–143495. (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On June 18, 2015, the General Counsel filed a Motion for Summary Judgment. On June 26, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed an opposition to the Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its argument, raised and rejected in the representation proceeding, that permitting a proliferation of elections is contrary to the Board’s Health Care Rule, Section 103.30 of the Board’s Rules and Regulations, concerning appropriate units in acute health care facilities.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to ad-

duce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a not-for-profit corporation with an office and place of business in Chicago, Illinois (the Respondent’s facility), has been engaged in the business of operating an acute care hospital.

During the calendar year preceding the issuance of the complaint, a representative period, the Respondent has derived gross revenues in excess of \$250,000 from providing acute care hospital services at its facility. In that same period, the Respondent purchased and received goods and materials valued in excess of \$5000 directly from entities outside the State of Illinois for use at its facility.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following self-determination elections held in two voting groups on March 25 and 26, 2015, the Regional Director issued two separate certifications of representative on April 16, 2015, certifying that the Union is the exclusive collective-bargaining representative of the supply chain tech employees employed in the Respondent’s warehouse operations department at its warehouse and the OR materials tech and supply chain tech employees employed in the Respondent’s materials management department at its main campus as part of the existing unit of nonprofessional employees that the Union currently represents.²

¹ Member Johnson would have granted review in the underlying representation proceeding for the sole purpose of reviewing *St. Vincent Charity Medical Center*, 357 NLRB No. 79 (2011). He agrees, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate.

² The primarily nonprofessional unit is a preexisting nonconforming unit under the Board’s Health Care Rule. See Sec. 103.30(a) and (c) of the Board’s Rules and Regulations.

Included: All full-time and regular part-time OR Materials Tech and Supply Chain Tech employees employed in the Employer's Materials Management Department, Patient Care Technician (PCT) employees, environmental aides, environmental specialists, environmental technicians, dietary workers, laundry workers, transport specialists, elevator operators, maintenance employees, central service technical assistants, nursing attendants, psychiatric aides, community health aides, lab helpers, operating room attendants, mail room clerks, unit clerks, geriatric technicians, patient service associates (PSAs), physical therapy aides, rehabilitation aides, pediatric assistants, pediatric nursing assistants, certified nursing assistants (CNAs), truck drivers (laundry & SPD), food service assistant I lead, food service assistant II lead, environmental specialist lead, transport specialist lead, unit clerk lead, and journeymen lead who are employed by Respondent at its main campus currently located at 1653 West Congress Parkway, Chicago, Illinois and all full-time and regular part-time Supply Chain Tech employees employed in the Employer's Warehouse Operations Department at its warehouse currently located at 2061 West Hasting, Chicago, Illinois.

Excluded: Confidential employees, Nurse Assistant II (NA II) employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act, temporary and casual employees, regular part-time employees normally working less than seventeen (17) hours per week, and all other employees of the Hospital.

The Union continues to be the exclusive collective-bargaining representative of the unit, including the employees in the voting groups, under Section 9(a) of the Act.

B. Refusal to Bargain

By letters dated April 20, 2015, the Union requested that the Respondent meet to bargain collectively with it as the exclusive collective-bargaining representative of the supply chain tech employees employed in the Respondent's warehouse operations department at its warehouse and the OR materials tech and supply chain tech employees employed in the Respondent's materials management department at its main campus. Since about April 20, 2015, the Respondent has failed and refused to do so.³ We find that this failure and refusal constitutes

³ Although the complaint alleges that the Union requested that the Respondent meet to bargain with it as the exclusive collective-bargaining representative of the unit and that the Respondent refused, it is clear from the record, and the Respondent admits in its answer, that the Union requested bargaining over terms and conditions of employ-

an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about April 20, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the supply chain tech employees employed in the Respondent's warehouse operations department at its warehouse and the OR materials tech and supply chain tech employees employed in the Respondent's materials management department at its main campus as part of the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.⁴

ORDER

The National Labor Relations Board orders that the Respondent, Rush University Medical Center, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Healthcare, Professional, Technical, Office, Warehouse, and Mail Order Employees Union, Local 743, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the supply chain tech employees employed in the Respondent's warehouse operations department at its warehouse and the OR materials tech and supply chain tech employees employed in the Respondent's materials management department at its main campus in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

ment that would apply to the employees in the two voting groups, and the Respondent refused to do so.

⁴ The complaint and the General Counsel's motion request that the Board require the Respondent to bargain in good faith with the Union as the exclusive representative of the unit for the period set forth in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Such a remedy, however, is inappropriate where, as here, the underlying representation proceeding involved a self-determination election. See *Winkie Mfg. Co.*, 338 NLRB 787, 788 fn. 3 (2003), aff'd. 348 F.3d 254 (7th Cir. 2003); *White Cap, Inc.*, 323 NLRB 477, 478 fn. 3 (1997), and cases cited there.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the supply chain tech employees employed in the Respondent's warehouse operations department at its warehouse and the OR materials tech and supply chain tech employees employed in the Respondent's materials management department at its main campus as part of the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time OR Materials Tech and Supply Chain Tech employees employed in the Employer's Materials Management Department, Patient Care Technician (PCT) employees, environmental aides, environmental specialists, environmental technicians, dietary workers, laundry workers, transport specialists, elevator operators, maintenance employees, central service technical assistants, nursing attendants, psychiatric aides, community health aides, lab helpers, operating room attendants, mail room clerks, unit clerks, geriatric technicians, patient service associates (PSAs), physical therapy aides, rehabilitation aides, pediatric assistants, pediatric nursing assistants, certified nursing assistants (CNAs), truck drivers (laundry & SPD), food service assistant I lead, food service assistant II lead, environmental specialist lead, transport specialist lead, unit clerk lead, and journeymen lead who are employed by Respondent at its main campus currently located at 1653 West Congress Parkway, Chicago, Illinois and all full-time and regular part-time Supply Chain Tech employees employed in the Employer's Warehouse Operations Department at its warehouse currently located at 2061 West Hasting, Chicago, Illinois.

Excluded: Confidential employees, Nurse Assistant II (NA II) employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act, temporary and casual employees, regular part-time employees normally working less than seventeen (17) hours per week, and all other employees of the Hospital.

(b) Within 14 days after service by the Region, post at its facilities at 1653 West Congress Parkway, Chicago, Illinois, and 2061 West Hasting, Chicago, Illinois, copies of the attached notice marked "Appendix."⁵ Copies of

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 20, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 7, 2015

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Healthcare, Professional, Technical, Office, Warehouse, and Mail Order Employees Union, Local 743, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of supply chain tech employees employed in the warehouse operations department at our warehouse and the OR materials tech and supply chain tech employees employed in the materials management department at our main campus in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for supply chain tech employees employed in the warehouse operations department at our warehouse and the OR materials tech and supply chain tech employees employed in the materials management department at our main campus as part of the following bargaining unit:

Included: All full-time and regular part-time OR Materials Tech and Supply Chain Tech employees employed in the Materials Management Department, Patient Care Technician (PCT) employees, environmental aides, environmental specialists, environmental technicians, dietary workers, laundry workers, transport specialists, elevator operators, maintenance employees, central service technical assistants, nursing attendants, psychiatric aides, community health aides, lab helpers, operating room attendants, mail room clerks, unit clerks, geriatric technicians, patient service associates

(PSAs), physical therapy aides, rehabilitation aides, pediatric assistants, pediatric nursing assistants, certified nursing assistants (CNAs), truck drivers (laundry & SPD), food service assistant I lead, food service assistant II lead, environmental specialist lead, transport specialist lead, unit clerk lead, and journeymen lead who are employed by us at our main campus currently located at 1653 West Congress Parkway, Chicago, Illinois and all full-time and regular part-time Supply Chain Tech employees employed in the Warehouse Operations Department at our warehouse currently located at 2061 West Hasting, Chicago, Illinois.

Excluded: Confidential employees, Nurse Assistant II (NA II) employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act, temporary and casual employees, regular part-time employees normally working less than seventeen (17) hours per week, and all other employees of the Hospital.

RUSH UNIVERSITY MEDICAL CENTER

The Board's decision can be found at www.nlrb.gov/case/13-CA-152806 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

